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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

## SAFARI CLUB INTERNATIONAL, et al.,

2:22-cv-01395-DAD-JDP

## Plaintiffs,

V.

**ROB BONTA, in his official capacity as  
Attorney General of the State of California,  
et al.,**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR AN ORDER  
CLARIFYING THE PRELIMINARY  
INJUNCTION**

Date: July 2, 2024

Time: 1:30 p.m.

Dept: 4 (Hearing Via Zoom)

Judge: Hon. Dale A. Drozd

Trial Date: None set

Action Filed: August 5, 2022

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## INTRODUCTION

Defendant Attorney General Rob Bonta respectfully asks the Court for an order clarifying that its April 12, 2024 Order Granting Plaintiffs' Motion for a Preliminary Injunction ("April 12 Order"), ECF No. 33, enjoins the enforcement only of *subdivision (a)* of California Business and Professions Code section 22949.80.

Throughout this litigation the only state regulation that Plaintiffs have challenged, and that any court has considered, is section 22949.80, subdivision (a). That is the relevant provision that concerns advertising firearm-related products to minors. Since Plaintiffs' original complaint, the parties and courts have referred to that provision as "section 22949.80" for short, but that does not change what has been at issue in this case: the requirements set forth in subdivision (a) of section 22949.80 only.

Section 22949.80 includes one other substantive provision. Specifically, subdivision (b) is a privacy provision—as opposed to an advertising one—that imposes requirements relating to the use and dissemination of minors’ personal information. However, Plaintiffs have never challenged subdivision (b), and no court has considered the validity of subdivision (b). Moreover, the provisions of section 22949.80 are presumptively severable, and at no time have Plaintiffs rebutted that presumption.

For these reasons, any preliminary injunction should be limited to the enforcement only of the advertising provision that has been at issue in this case. Because the April 12 Order refers to “section 22949.80,” however, Defendant ask the Court to issue an order clarifying that the preliminary injunction applies only to section 22949.80, subdivision (a).

## BACKGROUND

L CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 22949.80

Section 22949.80 contains two separate subdivisions that regulate speech or conduct. Subdivision (a) is the subdivision Plaintiffs challenge in this action. It states: "A firearm industry member shall not advertise, market, or arrange for placement of an advertising or marketing communication offering or promoting any firearm-related product in a manner that is designed,

1 intended, or reasonably appears to be attractive to minors.” Cal. Bus. & Prof. Code  
2 § 22949.80(a)(1).

3 Subdivision (b) of section 22949.80, meanwhile, does not purport to regulate  
4 any advertising or similar types of communications. *Id.* § 22940.80(b). Rather, it  
5 limits the use and dissemination of the personal information of minors. *Id.*

6 Subdivision (b) states:

7 “A firearm industry member publishing material directed to minors in  
8 this state or who has actual knowledge that a minor in this state is using or  
9 receiving its material, shall not knowingly use, disclose, compile, or allow a  
10 third party to use, disclose, or compile, the personal information of that minor  
with actual knowledge that the use, disclosure, or compilation is for the  
purpose of marketing or advertising to that minor any firearm-related product.”

11 *Id.*

12 Section 22949.80 also includes an express severability provision. *Id.* § 22949.80 (f).

13 **II. PROCEDURAL AND FACTUAL BACKGROUND**

14 Plaintiffs’ filed an initial Complaint in this action, followed by the operative First Amended  
15 Complaint (“FAC”). ECF Nos. 1, 12. They filed a preliminary injunction on October 21, 2022.  
16 ECF No. 13. This Court issued an Order Denying Plaintiffs’ Preliminary Injunction, in which the  
17 Court denied Plaintiffs’ motion in full. ECF No. 23. Plaintiffs appealed that Order to the Ninth  
18 Circuit Court of Appeals.

19 The Ninth Circuit ruled on Plaintiffs’ appeal in a short Memorandum. *Safari Club Int’l v.*  
20 *Bonta*, No. 23-15199, 2023 WL 6178500, at \*1 (9th Cir. Sept. 22, 2023). The Memorandum  
21 stated, “[f]or the reasons outlined in *Junior Sports Magazines v. Bonta*, No. 22-56090 (9th Cir.  
22 Sept. 13, 2023), we reverse the denial of preliminary injunction and remand for further  
23 proceedings consistent with that opinion.” *Id.* at \*1. In the *Junior Sports* opinion, the Ninth  
24 Circuit had similarly reversed the district court’s denial of the plaintiffs’ motion for preliminary  
25 injunction and remanded for further proceedings consistent with the opinion. *Junior Sports*  
26 *Mags. Inc. v. Bonta* (“*Junior Sports*”), 80 F.4th 1109, 1121 (9th Cir. 2023).

27 On March 20, 2024, the parties submitted to this Court a Joint Status Report. ECF No. 32.  
28 In the Status Report, Plaintiffs asked the Court to issue a preliminary injunction “consistent with

1 the Ninth Circuit’s opinion and judgment.” *Id.* at 2. Defendant took no position on that request.

2 *Id.*

3 In early April 2024, Plaintiffs informed Defendant that, since no preliminary injunction had  
 4 issued, they planned to file a new motion for preliminary injunction. Declaration of Gabrielle  
 5 Boutin, Ex. A at ¶4. Defendant informed Plaintiffs that he would not oppose the motion, but  
 6 only if the motion requested “an injunction consistent with the substance and scope of the Ninth  
 7 Circuit’s ruling.” *Id.* Defendants specifically explained, “[f]or example, we assume you will  
 8 request an injunction only of subsection (a) of Business & Professions Code section 22949.80,  
 9 since that is the only restriction on speech that the 9th Circuit addressed in its opinion [in *Junior  
 10 Sports*].” *Id.*

11 On April 12, 2024, before Plaintiffs filed a new motion for preliminary injunction,  
 12 however, this Court issued an Order Granting Plaintiffs’ Motion for a Preliminary Injunction.  
 13 ECF No. 33. The Order states that the Attorney General and certain related persons are enjoined  
 14 from enforcing “California Business & Professions Code § 22949.80.” *Id.* at 2.

15 The parties appear to disagree on whether this injunction was intended to enjoin only the  
 16 challenged advertising provision in subdivision (a), or both the advertising provision in  
 17 subdivision (a) and the privacy provision in subdivision (b). *See* Boutin Dec. at ¶ 6. Plaintiffs  
 18 have declined to stipulate to this request for an order clarifying that the preliminary injunction  
 19 applies only to subdivision (a). *Id.* They have stated that they intend to oppose this motion.

## 20 ARGUMENT

21 A district court may issue an order clarifying an injunction. *See Connecticut Gen. Life Ins.*  
 22 *Co. v. New Images of Beverly Hills*, 321 F.3d 878, 883 (9th Cir. 2003); *Alto v. Black*, 738 F.3d  
 23 1111, 1121-22 (9th Cir. 2013); *F.V. v. Jeppesen*, 477 F. Supp. 3d 1144, 1148 (D. Idaho 2020) (“A  
 24 district court has discretion to clarify the scope of an injunction” (quoting *Smagin v. Yegiazaryan*,  
 25 No. 2:14-CV-09764-RGK-PLA, 2020 WL 1652347, at \*3 (C.D. Cal. April 1, 2020))).<sup>1</sup>

26 \_\_\_\_\_  
 27 <sup>1</sup> “Moreover, a district court may *sua sponte* order or modify injunctive relief.”  
 28 *Armstrong v. Brown*, 768 F.3d 975, 980 (9th Cir. 2014); *accord Sacramento Homeless Union v.  
 Cnty. of Sacramento*, 617 F. Supp. 3d 1179, 1199 (E.D. Cal. 2022).

1       Here, Defendant asks the Court to issue an order clarifying that the April 12 Order enjoins  
 2 the enforcement only of subdivision (a) of section 22949.80, and not subdivision (b).

3       Subdivision (a) is the only provision of section 22949.80 that Plaintiffs have challenged in  
 4 this action; Plaintiffs have not established that they are entitled to a preliminary injunction  
 5 enjoining the enforcement of any other provision, including subdivision (b).<sup>2</sup> Plaintiffs' initial  
 6 Complaint and operative FAC allege only that the advertising provision in subdivision (a) is  
 7 unconstitutional. *See* Complaint, ECF No. 1; FAC, ECF No. 12.<sup>3</sup> Likewise, in Plaintiffs' original  
 8 motion for preliminary injunction and their appeal, they sought to enjoin enforcement only of  
 9 subdivision (a). *See* ECF No. 13. Accordingly, this Court's order denying that motion and the  
 10 Ninth Circuit's decision in *Junior Sports*<sup>4</sup> considered only whether the requirements of  
 11 subdivision (a) are constitutional and otherwise subject to a preliminary injunction. ECF No. 23;  
 12 *Junior Sports*, 80 F.4th 1109. Neither Plaintiffs' briefs, this Court's order, nor the *Junior Sports*

13       <sup>2</sup> Plaintiffs' claims include that certain terms in subdivision (a) are unconstitutionally  
 14 vague due to their definitions in subdivision (c) of the statute. *See* FAC, ECF. No. 12, at 41-43.  
 15 This amounts to a challenge to the substantive requirements of subdivision (a).

16       <sup>3</sup> The Complaint and FAC each contain only one reference to subdivision (b) or its  
 17 requirements, when they briefly summarize the provision in the context of Plaintiff's description  
 18 of the statute. Complaint, ECF No. 1, at 17; FAC, ECF No. 12, at 48.

19       <sup>4</sup> Just as here, until recently, the plaintiffs in *Junior Sports* have only alleged, argued for,  
 20 and supported a preliminary injunction as to the advertising restrictions in subdivision (a). *See*  
 21 *Junior Sports Mags. Inc. v. Bonta* at 6, n.3, No. 2:22-cv-04663-CAS (JCx), 2022 WL 14365026  
 22 (C.D. Cal. Oct. 24, 2022), rev'd and remanded, 80 F.4th 1109 (9th Cir. 2023) (specifically  
 23 recognizing that subdivision (b) of section 22949.80 had not been "challenged by plaintiffs in  
 24 their complaint or briefing on this motion"). *See also* Complaint for Injunctive and Declaratory  
 25 Relief, ECF No. 1, *Junior Sports Mags. Inc. v. Bonta*, No. 2:22-cv-04663-CAS (JCx) (C.D. Cal.  
 26 Jul. 8, 2022); Memorandum of Points and Authorities in Support of Plaintiffs' Motion for  
 27 Preliminary Injunction, ECF No. 12-1, *Junior Sports Mags. Inc. v. Bonta*, No. 2:22-cv-04663-  
 28 CAS (JCx) (C.D. Cal. Jul. 10, 2022); Reply to Defendant's Opposition to Plaintiffs' Motion for  
 29 Preliminary Injunction, ECF No. 21, *Junior Sports Mags. Inc. v. Bonta*, No. 2:22-cv-04663-CAS  
 30 (JCx) (C.D. Cal. Aug. 15, 2022); *Junior Sports Mags. Inc. v. Bonta*, No. 2:22-cv-04663-CAS  
 31 (JCx), 2022 WL 14365026 (C.D. Cal. Oct. 24, 2022), *rev'd and remanded*, 80 F.4th 1109 (9th  
 32 Cir. 2023); Appellants' Opening Brief, Dkt. 7, *Junior Sports*, 80 F.4th 1109 (9th Cir. Dec. 19,  
 33 2022) (No. 22-56090), 2022 WL 17980278; Appellants' Reply Brief, Dkt. 25, *Junior Sports*, 80  
 34 F.4th 1109 (9th Cir. Feb. 17, 2023) (No. 22-56090), 2023 WL 2226847. *See also* *Junior Sports*,  
 35 80 F.4th 1109, 1121 (9th Cir. 2023). Like here, only after remand do the *Junior Sports* plaintiffs  
 36 now seek a preliminary injunction that encompasses subdivision (b). *See* Plaintiffs'  
 37 Memorandum of Points and Authorities in Support of Motion to Enforce the Mandate and Issue  
 38 Preliminary Injunction, ECF No. 59-1, *Junior Sports Mags. Inc. v. Bonta*, No. 2:22-cv-04663-  
 39 CAS (JCx) (C.D. Cal. May 2, 2024).

1 ruling mentions subdivision (b) or its limitations on the use and dissemination of minors' personal  
 2 information.<sup>5</sup> ECF Nos. 13, 18, 23; Appellants' Opening Brief, , Dkt. 7-1, *Safari Club Int'l v.*  
 3 *Bonta*, No. 23-15199 (9th Cir. Mar. 10, 2023); Appellants' Reply Brief, Dkt. 21, *Safari Club Int'l*  
 4 *v. Bonta*, No. 23-15199 (9th Cir. April 28, 2023); *Junior Sports*, 80 F.4th 1109.

5 In sum, Plaintiffs has never alleged or shown, and no court has ruled, that subdivision (b) is  
 6 likely unconstitutional or otherwise properly subject to preliminary injunctive relief.

7 Subdivision (b) is also not subject to a preliminary injunction merely because it resides  
 8 alongside subdivision (a) in section 22949.80. The statute contains a severability clause. Cal.  
 9 Bus. & Prof. Code § 22949.80(f). This clause renders subdivision (a) presumptively severable.  
 10 *See Sam Francis Found. v. Christies, Inc.*, 784 F.3d 1320, 1325 (9th Cir. 2015) (“Severability is  
 11 . . . a matter of state law” (ellipsis in original)); *Vivid Ent., LLC v. Fielding*, 774 F.3d 566, 574  
 12 (9th Cir. 2014) (“California law directs courts to consider first the inclusion of a severability  
 13 clause in the legislation . . . ‘The presence of such a clause establishes a presumption in favor of  
 14 severance’” (citing and quoting *Cal. Redev. Ass'n v. Matosantos*, 53 Cal.4th 231, 270 (2011)).  
 15 Although this is a rebuttable presumption, Plaintiffs have never met their burden to rebut the  
 16 presumption. *See Santa Barbara Sch. Dist. v. Superior Court*, 13 Cal.3d 315, 331 (1975)  
 17 (“Although not conclusive, a severability clause normally calls for sustaining the valid part of the  
 18 enactment”).

19 It is true that, previously in this action, the parties and courts have generally referred to  
 20 “section 22949.80” as a shorthand for subdivision (a). Plaintiffs initiated this trend in its  
 21 Complaint and FAC through its definition of the challenged provision. *See* FAC, ECF No. 12, at  
 22 2 (“Through this Complaint, Plaintiffs seek to have declared and adjudged unconstitutional, and  
 23 to enjoin the enforcement of, California Business & Professions Code section 22949.80 (“Section  
 24 22949.80”), which prohibits ‘firearm industry members,’ like Plaintiffs, from advertising or  
 25 marketing any firearm-related product in a manner that is “designed, intended, or reasonably

26 <sup>5</sup> Although the Table of Authorities in Plaintiffs' Ninth Circuit Reply Brief states that  
 27 subdivision (b) of section 22949.80 appears on pages 17 and 27 of the brief, the provision does  
 28 not actually appear on those or any other pages in the body of the brief. *See* Appellants' Reply  
 Brief at v, 17, 27, Dkt. 21, *Safari Club Int'l v. Bonta*, No. 23-15199 (9th Cir. April 28, 2023).

1 appears to be attractive to minors.’ Cal. Bus. & Prof. Code § 22949.80(a)(1)”); *see also*  
2 Complaint, ECF No. 1, at 2. Defendant, this Court, and the Ninth Circuit merely followed suit.  
3 *See Order Denying Plaintiffs’ Preliminary Injunction*, ECF No. 23 at 2-3; *Junior Sports*, 80 F.4th  
4 at 1114. In any event, this technicality does not alter the substance of what Plaintiffs are entitled  
5 to, or what this Court and the Ninth Circuit have ruled, with respect to a preliminary injunction.

6 For all of these reasons, it should be clarified that this Court intended only to preliminarily  
7 enjoin subdivision (a) of section 22949.80 in the April 12 Order.

8 **CONCLUSION**

9 Defendant respectfully asks the Court to issue an order clarifying that the April 12 Order  
10 enjoins the enforcement only of subdivision (a) of California Business and Professions Code  
11 section 22949.80.

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Dated: May 15, 2024

Respectfully submitted,

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## CERTIFICATE OF SERVICE

Case Name: **Safari Club International v.  
Bonta**

No. **2:22-cv-01395-DAD-JDP**

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I hereby certify that on May 15, 2024, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER CLARIFYING THE PRELIMINARY INJUNCTION**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 15, 2024, at Los Angeles, California.

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Dora Mora  
Declarant

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*Dora Mora*  
Signature

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